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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**FEDERAL COMMUNICATIONS COMMISSION**  
OFFICE OF SECRETARY

In the Matter of

Interstate, Interexchange Marketplace;  
and Implementation of Section 254(g)  
of the Communications Act of 1934,  
as Amended

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CC Docket No. 96-61

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To: The Commission

**Comments of UTC**

Pursuant to Section 1.415 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC),<sup>1</sup> hereby submits its comments in response to the *Notice of Proposed Rule Making (NPRM)* in the above-captioned proceeding.

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines. Over 1,000 such entities are members of UTC, ranging in size from large combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives serving only a

<sup>1</sup> UTC was formerly known as the Utilities Telecommunications Council.

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few thousand customers each. All utilities depend upon reliable and secure communications to assist them in carrying out their public service obligations, and as a result many have gained extensive experience in operating sophisticated communications networks. In addition, changes in their core energy businesses necessitate the deployment of telecommunications networks that could be utilized to offer telecommunications services. As the organization that took a lead role in ensuring that the Telecommunications Act of 1996 allowed for and promoted utility entrance into telecommunications, UTC is pleased to offer the following comments.

**I. The FCC Should Exercise Its Forbearance Authority With Respect To Tariff Filing For Domestic, Interexchange Services**

As part of its implementation of the Telecommunications Act of 1996, the FCC has adopted the current *NPRM* in order to examine possible changes in the regulatory treatment of interstate, interexchange telecommunications service providers.

Specifically, the FCC seeks comment on whether it should forbear from applying Section 203 tariff filings requirements on non-dominant interexchange carriers for domestic services. UTC believes that the clear language of the Telecommunications Act and the public interest compel the FCC to forbear from applying tariff filing requirements on all domestic, non-dominant interexchange carriers. Section 10 of the Act requires the FCC to:

[F]orbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

In addition, in determining whether forbearance from enforcing a particular provision or regulation is in the public interest, the Commission is specifically required to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.

Below is a brief discussion explaining why the above listed forbearance requirements are satisfied with respect to tariff filing for domestic services offered by non-dominant, interexchange carriers.

**1. Tariffs Are Unnecessary To Ensure Against Unjust Or Unreasonable Charges Or Practices**

By definition non-dominant carriers lack market power, and are therefore unlikely to behave anticompetitively as such behavior would result in a loss of customers.

Further, UTC shares the Commission's belief that the Communications Act's objectives of just, reasonable, and not unjustly or unreasonably discriminatory rates can be achieved effectively through market forces and the administration of the complaint process.

## **2. Tariffs Are Unnecessary To Protect Consumers**

Requiring non-dominant interexchange carriers to file tariffs for domestic offerings is not necessary for the protection of consumers of interexchange services. In fact, it could be argued that mandatory tariff filing could tend to harm consumers by undermining the development of vigorous competition. As the FCC is well aware, carriers subject to tariff filing are far more likely to act in “lock step” than ones that have complete and unfettered discretion to adjust to market forces. As the FCC notes, mandatory tariffing provides an opportunity for collusive pricing by competing carriers because carriers can ascertain their competitors' existing rates and keep track of any changes by reviewing filed tariffs. Moreover, as recently as the *1994 Regulatory Treatment of Mobile Services Order*,<sup>2</sup> the Commission has consistently found that the imposition of tariff obligations in these circumstances stifles price competition and service and marketing innovations. Given the current robust level of competition in the domestic, interexchange market, and the anticipated increase in competition that is likely to be brought about by the passage of the Act, there is even less need for tariffs.

## **3. Forbearance Is Consistent With The Public Interest**

Finally, forbearing from imposing tariff filing requirements on non-dominant interexchange carriers is consistent with the public interest. As part of the determination of whether forbearance is consistent with public interest, the 1996 Act requires the Commission to consider "whether forbearance from enforcing the provision or regulation

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<sup>2</sup> *Order*, 59 FR 18493, April 19, 1994.

will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services." UTC agrees with the FCC's tentative conclusion that forbearance from requiring tariff filings for non-dominant carriers will promote competition and deter price coordination. In the *Sixth Report and Order*,<sup>3</sup> that arose out of the "Competitive Carrier Proceedings," the Commission found that requiring non-dominant carriers to file tariffs can: (1) take away carriers' ability to make rapid, efficient responses to changes in demand and cost; (2) impede and remove incentives for competitive price discounting; and (3) impose costs on carriers that attempt to make new offerings.

For all of the above reasons, the Commission should immediately exercise its forbearance authority with respect to the Section 203 tariff filing requirements for all domestic non-dominant, interexchange carriers. Such forbearance will help foster the growth of competition in the domestic long-distance market.

## **II. Forbearance From Tariff Filing Should Be Permissive**

UTC opposes the Commission's recommendation that forbearance from tariff filing requirements for domestic services of non-dominant interexchange carriers should be implemented on a mandatory basis. The FCC's exercise of its forbearance authority with respect to tariff filing for interexchange services should be permissive as there may be a number of valid reasons why a carrier would want to file tariffs.

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<sup>3</sup> *Sixth Report and Order*, 99 FCC 2d 1020 (1985)

Certain interexchange carriers, particularly smaller carriers may continue to find benefits in tariff filing. Tariffs provide uniformity and allow for common reference points. In addition, some of the protections against liabilities historically contained within tariffs are a reasonable *quid pro quo* for the common carrier obligation to serve the public on an indiscriminate basis. Tariffs should remain as an option for interexchange carriers.

### **III. Conclusion**

The clear language of the Telecommunications Act and the public interest compel the FCC to forbear from applying tariff filing requirements on all domestic, non-dominant interexchange carriers. The Commission's exercise of its forbearance authority regarding tariff filing for interexchange services should be permissive.

**WHEREFORE, THE PREMISES CONSIDERED.** UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.


Respectfully submitted,

**UTC**

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